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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/086,857 05/29/98 FREDERICK D D-1093

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PM82/1203

EXAMINER

BUTLER, M

ART UNIT

PAPER NUMBER

3651

DATE MAILED:

12/03/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/086,857**

Applicant(s)

**Frederick et al.**

Examiner

**Michael E. Butler**

Group Art Unit  
**3651**



☒ Responsive to communication(s) filed on May 29, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-44 is/are pending in the application

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-44 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

## **DETAILED ACTION**

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-3 and 24-26, drawn to an access controlled refrigerated medicine storage and dispensing device, classified in class 700, subclass 236.
  - II. Claims 4-8 and 10-11 drawn to a rotary locking mechanism with lever, pawl, and solenoid, said locking mechanism attached to an access controlled refrigerated medicine storage device, classified in class 70, subclass 278.7.
  - III. Claims 12-15 and 23 drawn to a system for attaching a locking mechanism to a refrigerator door classified in class 70, subclass 466.
  - IV. Claims 16-20 drawn to a system for reading identification indicia into a computer classified in class 700, subclass 225.
  - V. Claims 21-22 drawn to a locking module with self return mechanism, classified in class 70, subclass 144.
  - VI. Claims 27 and 30-38, and 41-44, drawn to a method for controlling a refrigerated medicine storage and dispensing device, classified in class 700, subclass 237.

Art Unit: 3651

VII. Claims 28-30, drawn to a method for attaching an access controlled locking mechanism to the dispenser, classified in class 70, subclass 451.

VIII. Claims 39-40 drawn to a method for locking a door classified in class 70, subclass 192.

2. Invention I is related to inventions VI and VIII as apparatus and processes for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus or I may be used to vend beverages. In this case, process VI may be used to recognize the presence of medical inventory within a storage location. In this case, the process VIII may be used to a lock to a house, office, or vault.

3. Inventions I is related to inventions II-V as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because a locking mechanism is not necessary to the dispensing of a product nor is a specific locking mechanism essential to the function of the dispenser; the specifics of the mounting of the locking mechanism are not essential to the operation of the medicine dispenser; a reading device is not essential to the operation of the medicine dispenser as the medicine inventory or the status of the

Art Unit: 3651

housing may be entered via a keyboard; medicine may be dispensed without a self returning locking mechanism such using an active return on the locking mechanism.

The subcombination has separate utility such as a stand alone locking mechanism for use on safes, offices, or homes; the attachment means may be used to mount any lock to any housing such as an office, home, or safe; the reading indicia may be used to input or output inventory such as at a warehouse or at a checkout counter; the locking return mechanism may be used to return a lock or door latch on a building or stand alone lock.

4. Inventions I and VII are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process may be used to attach a lock to an office or house.

5. Inventions II, III, IV, and V are related as subcombinations usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as a lock for a house or vault. In the instant case, invention II has separate utility such as a locking mechanism for a house or vault. In the instant case, invention III has separate utility such as the attaching of a lock to a house or vault. In the instant case, invention IV has separate utility such as an inventory data input reader to a computer. In the instant case, invention V has separate utility such as a lock release mechanism. See MPEP § 806.

6. Inventions VI is related to invention VIII as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as

Art Unit: 3651

claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the dispensing of medicine and monitoring of inventory do not require a locking mechanism. The subcombination has separate utility such as locking the door of a safe.

7. Inventions VII and VIII are related as subcombinations usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. See MPEP § 806.

8. Inventions VI and VII are related as subcombinations usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VI has separate utility such as a dispenser of medicine. Invention VII has separate utility such as the mechanical attachment of subsystems to each other. See MPEP § 806. In this case the product may be dispensed without utilizing a processor or terminal or without comparing id codes.

9. The inventions are distinct, each from the other because of the following reasons: Inventions I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the tracking of individual transactions is not

Art Unit: 3651

necessary for the dispensing of the product. The subcombination has separate utility such as a transaction logger and a characteristic profiler for recipients of the sample.

10. The inventions are distinct, each from the other because of the following reasons: Inventions II and IV are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the tracking of individual transactions is not necessary for the dispensing of the product. The subcombination has separate utility such as a transaction logger and a characteristic profiler for recipients of the sample.

11. Inventions III and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the individual transactions may be logged or recorded without the terminal.

12. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

13. This application contains claims directed to the following patentably distinct species of the claimed invention:

Art Unit: 3651

Species I: The embodiment of a medical dispensing apparatus with a data terminal input device.

Species II: The embodiment of an access controlling medical dispensing apparatus with a reading identification indicia input device.

14. Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims appear to be generic.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitation of an allowed generic claim as provided by 37 C. F. R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M. P. E. P. sec 809.02(a).



Art Unit: 3651

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or obvious variant or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U. S. C. § 103 of the other invention.

***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (703) 308-8344.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis, can be reached on (703) 308-8344. The fax number for the Group is (703) 305-7687.

*Michael E. Butler*

Michael E. Butler

Examiner



**CHRISTOPHER P. ELLIS  
PRIMARY EXAMINER**